

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,     ) Application No. NUSF-7  
on its own motion, seeking to        )  
review and approve requests for       ) WAIVER REQUESTS GRANTED  
modification of the funding           ) IN PART AND DENIED IN PART  
calculation for the Nebraska         )  
Universal Service Fund.               ) Entered: September 26, 2000

BY THE COMMISSION:

B A C K G R O U N D

On May 18, 1999, the Commission opened this docket to consider requests for additional funding from the Nebraska Universal Service Fund (NUSF) made by a number of rural incumbent local exchange carriers (ILECs). These rural carriers sought a modification of the funding mechanism set forth in C-1628/NUSF. The companies requesting waivers and made parties to this docket include: Arlington Telephone Company; Blair Telephone Company; Cambridge Telephone Company; Clarks Telecommunications Company; Consolidated Telephone Company; Cozad Telephone Company; Eastern Nebraska Telephone Company; Glenwood Telephone Membership Corporation; Hartington Telecommunications, Inc.; Hemingford Cooperative Telephone Company; Hershey Cooperative Telephone Company; Keystone-Arthur Telephone Company; Pierce Telephone Company; Stanton Telecom, Inc.; Three River Telco; and United Telephone Company of the West d/b/a Sprint.

Shortly after the Commission opened this docket, three additional companies requested to be included in this docket, and, by Commission Order entered May 26, 1999, Curtis Telephone Company, Inc., Nebraska Central Telephone Company and Elsie Communications, Inc. were made parties to this proceeding.

On December 2, 1999, Cozad Telephone Company (Cozad) filed a letter requesting that the Commission permit it to withdraw its waiver request. The Commission granted Cozad's request and an order was entered on December 7, 1999, removing Cozad from this docket.

A public hearing was held on December 9, 1999, and again on January 11, 2000. Both hearings took place in the Commission hearing room in Lincoln, Nebraska. Each company was given the opportunity to testify in support of its waiver request. In addition, post-hearing briefs were filed and accepted for Commission consideration.

On September 6, 2000, this Commission entered an order denying the waiver requests of: Arlington Telephone Company; Blair Telephone Company; Clarks Telecommunications Company; Eastern Nebraska Telephone Company; Keystone-Arthur Telephone Company; and Pierce Telephone Company.

O P I N I O N     A N D     F I N D I N G S

In the present Order the Commission addresses the waiver requests of Consolidated Telephone Company (Consolidated); Curtis Telephone Company (Curtis); Elsie Communications, Inc. (Elsie); Glenwood Telephone Membership Corporation (Glenwood); Hartington Telecommunications, Inc. (Hartington); Hemingford Cooperative Telephone Company (Hemingford); Hershey Cooperative Telephone Company (Hershey); Nebraska Central Telephone Company (Nebraska Central); and Three River Telco (Three River).

As a general matter, this Commission views the NUSF-7 waiver requests as falling into one or more of three categories; a request for the ability to include prior period adjustments as a known and measurable change, a request for an exemption from netting the increase in local revenue with the decrease in access revenue ("Keep Local"), or a request for the Commission to grant additional NUSF funding such that the carrier reaches a 12 percent rate of return ("12% ROR").

The Commission considers all of the Keep Local and 12% ROR requests as requests for additional NUSF support. Thus, a denial shall be a denial of all additional funding requests from a company and a grant, or grant in part, shall be a grant of additional funding in the amount determined by the Commission's methodology not to exceed the sum of all waiver requests from a company.

In our September 6, 2000, Order the Commission denied the waiver requests made by a number of companies requesting to be brought up to 12 percent rate of return by virtue of underearnings alone. The Commission maintains the position that the 12 percent cost of capital amount included on the NUSF-EARN form was, and is, not to be a floor to which the NUSF funds each ILEC.

The Commission is mindful of the fact that providing telecommunication services in a rapidly changing environment requires upgrades in plant. For some companies, the facility investments and the recovery of costs associated with said investments were uncertain because of the timing they were made. The Commission finds it is appropriate to grant, in part, the waiver requests with amounts to be determined on a carrier by carrier basis of the companies who have made plant investment and have not been able to recover that investment due to the time frame in which the investment was made. However, the Commission concludes that each company should share the responsibility to support their own facility investment through other resources including, but not limited to, additional service offerings and increased penetration rates. Therefore, in our calculations, a portion will be allocated away so that responsibility for making facility investments is not borne solely by NUSF. Moreover, if the companies have not already done so, we will allocate the appropriate portion of these costs to the interstate jurisdiction.

Each company may receive a certain amount as indicated above of additional NUSF support provided that this amount does not raise that company's rate of return above ten percent. If this amount exceeds a ten percent rate of return then the Commission shall use

the ten percent as a cap. In short, a ten percent rate of return is the maximum to which the NUSF shall support companies requesting additional NUSF support for facility investment. This calculated amount will be reduced by any earnings above 12% during the preceding 10 years.

The Commission has calculated amounts of additional NUSF support on a company by company basis. Each company provided information relating to the amount and type of facility investments referenced in the record and used by the companies as justification for a grant of additional NUSF support. With the information provided, the Commission conducted an analysis of the applicable carrier's earnings and calculated the amount each carrier should receive based upon the methodology set forth above. Because the financial information filed by each carrier was filed confidentially, the Commission-approved amounts will be made available to each approved company on a separate attachment.

Curtis, Elsie, Glenwood and Hemingford requested additional NUSF support justified by facility investments. For reasons set forth above, the Commission finds that these requests should be granted in part and each should receive additional NUSF support pursuant to the calculations described herein.

Three River and Hartington requested additional NUSF support justified by facility investments. The Commission has determined that, over the preceding 10 year period, Three River and Hartington have earned amounts significantly above a twelve percent rate of return. These overearning amounts, for both companies, exceed the Commission calculated amount of additional NUSF support that each company may receive, subject to the ten percent rate of return cap. Therefore, for the reasons set forth above, the Commission finds the requests of Three River and Hartington are hereby denied.

Consolidated filed a waiver request for a known and measurable change due to a NECA prior period adjustment. Nebraska Central also requested a waiver based upon a known and measurable change due to a prior period adjustment. Elsie also made adjustments to their NUSF-EARN form to reflect the removal of non-recurring expenses and changes in their federal universal service revenues. Curtis made adjustments to their NUSF-EARN form to reflect the removal of non-regulated expenses and a NECA prior period adjustment. The Commission agrees with these companies that it is reasonable in this case to allow these companies to make adjustments for these significant known and measurable events that occur over the support period and are not adequately reflected in the base period. Therefore, the Commission finds these requests for these known and measurable changes due to prior period adjustments are reasonable and should be granted.

The request by Hershey was not a request for additional NUSF support. Hershey's waiver asks that because of its underearnings condition it be allowed to continue to use interstate settlement factors in the determination of Hershey's intrastate Traffic Sensitive rate levels. Said rates were filed previously with the Commission and comply with the access rate caps set forth in the

January 13, 1999, C-1628 Order, even though the new rates are slightly higher than the previous rates. The Commission finds that the increased revenue amount at issue here is insignificant. Therefore the Commission grants Hershey's waiver request, not on the basis that it is earning below a certain rate of return, but because the Commission finds the request is de minimus.

The Commission has always held the position that it does not wish to discourage future facility investments by the rural companies. However, on a going forward-basis, the Commission advises companies to submit a waiver request for additional NUSF funding prior to their making the stated investment.

The criteria pertaining to future waiver requests is only applicable with respect to rural ILECs. The Commission believes the public policy supporting the differentiated treatment of rural and non-rural carriers, with respect to waiver requests for additional NUSF support, is clear, as the non-rural companies are more able to spread their costs to counterbalance the cost of facility investments in their rural exchanges.

#### O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the requests for additional Nebraska Universal Service Fund support made by Curtis Telephone Company, Elsie Communications, Inc., Glenwood Telephone Membership Cooperation and Hemingford Cooperative Telephone Company shall be, and are hereby granted in part as set forth above.

IT IS FURTHER ORDERED that the requests for additional Nebraska Universal Service Fund support made by Three River Telco and Hartington Telecommunications, Inc., shall be, and are hereby denied.

IT IS FURTHER ORDERED that the requests for adjustments due to known and measurable events filed by Consolidated Telephone Company, Curtis Telephone Company, Elsie Communications, Inc. and Nebraska Central Telephone Company, shall be, and are hereby granted.

IT IS FINALLY ORDERED that the request to continue to be allowed to use interstate settlement factors in the determination of intrastate Traffic Sensitive rate levels filed by Hershey Cooperative Telephone Company, shall be, and it is hereby, denied in part and granted in part as set forth above.

MADE AND ENTERED in Lincoln, Nebraska this 26<sup>th</sup> day of September, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director

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